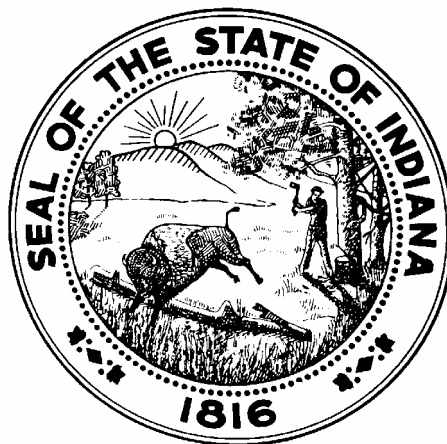


**STATE BOARD OF ACCOUNTS  
302 West Washington Street  
Room E418  
INDIANAPOLIS, INDIANA 46204-2765**

REVIEW REPORT  
OF

CLERK OF THE INDIANA SUPREME COURT,  
INDIANA COURT OF APPEALS  
AND INDIANA TAX COURT  
STATE OF INDIANA

June 1, 2001 to July 7, 2003





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#### AGENCY OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Clerk of the Indiana Supreme Court, Indiana Court of Appeals and Indiana Tax Court	Mr. Brian Bishop	01-01-99 to 07-07-03
Acting Clerk of the Indiana Supreme Court, Indiana Court of Appeals and Indiana Tax Court	Ms.Colleen McNenny Shere	07-08-03 to 12-31-06



# STATE OF INDIANA

AN EQUAL OPPORTUNITY EMPLOYER

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## INDEPENDENT ACCOUNTANT'S REPORT

TO: THE OFFICIALS OF THE CLERK OF THE INDIANA SUPREME COURT,  
INDIANA COURT OF APPEALS AND INDIANA TAX COURT

We have reviewed the receipts, disbursements, and assets of Clerk of the Indiana Supreme Court, Indiana Court of Appeals, and Indiana Tax Court for the period of June 1, 2001, to July 7, 2003. The Clerk of the Indiana Supreme Court, Indiana Court of Appeals, and Indiana Tax Court's management is responsible for the receipts, disbursements, and assets.

Our review was conducted in accordance with attestation standards established by the American Institute of Certified Public Accountants. A review is substantially less in scope than an examination, the objective of which is the expression of an opinion on receipts, disbursements, and assets. Accordingly, we do not express such an opinion.

Financial transactions of this office are included in the scope of our audits of the State of Indiana as reflected in the Indiana Comprehensive Annual Financial Reports.

Based on our review, nothing came to our attention that caused us to believe that the receipts, disbursements, and assets of the Clerk of the Indiana Supreme Court, Indiana Court of Appeals, and Indiana Tax Court are not in all material respects in conformity with the criteria set forth in the Accounting and Uniform Compliance Guidelines Manual for State Agencies, and applicable laws and regulations except as stated in the review comments.

STATE BOARD OF ACCOUNTS

August 15, 2003

CLERK OF THE INDIANA SUPREME COURT,  
INDIANA COURT OF APPEALS AND INDIANA TAX COURT  
REVIEW COMMENTS  
July 7, 2003

SDO FUND RECONCILIATIONS

The Clerk of the Indiana Supreme Court, Indiana Court of Appeals, and Indiana Tax Court has not performed a bank reconciliation of its Special Disbursing Officer (SDO) in a timely manner.

A bank reconciliation must be performed for the SDO fund each month. The bank statement for the checking account must be reconciled to the check register. This reconciliation must be formally documented. (Accounting and Uniform Compliance Guidelines Manual for State Agencies, Chapter 7)

ACCOUNTING RECORDS

As stated in the prior Audit Report B16984, the Clerk of the Indiana Supreme Court, Indiana Court of Appeals and Indiana Tax Court's accounting records for the Attorneys' Annual Fees receipts is not reconciled with the bank statement.

Each agency is responsible for maintaining an effective and accurate accounting system for subsidiary and supplementary records. At all times, the agency's manual and computerized records, subsidiary ledgers, control ledger, and reconciled bank or Auditor's balance should agree. If reconciled bank or Auditor's balance is less than the subsidiary or control ledgers, then the responsible official or employee may be held personally responsible for the amount needed to balance. (Accounting and Uniform Compliance Guidelines Manual for State Agencies, Chapter 1)

DEPOSIT OF PUBLIC FUNDS

Pursuant to Ind. Admission Rule 23, Sec. 21 (f), The Clerk of the Indiana Supreme Court, Court of Appeals and Indiana Tax Court collects funds on behalf of the Disciplinary Commission and the Continuing Legal Education Fund. These funds are deposited in a bank account titled "Clerk of the Courts – Annual Fees." These funds are forwarded to the Disciplinary Commission and the Continuing Legal Education Fund.

We found no statutory authority for the Clerk to deposit public funds in a bank account without authorization from the Treasurer of State.

Per Indiana Code 5-13-6-1, ". . . all public funds collected by state officers, other than the treasurer of state, shall be deposited with the treasurer of state, or an approved depository selected by the treasurer of state no later than the business day following the receipt of funds."

Per Indiana Code 5-13-4-20, "Public funds" means all fees and funds of whatever kind or character coming into the possession of any public officer by virtue of that office . . ."

Each agency, department, institution or office is responsible for compliance with applicable statutes, regulations, contract provisions, state policies, and federal requirements. (Accounting and Uniform Compliance Guidelines Manual for State Agencies, Chapter 1)

CLERK OF THE INDIANA SUPREME COURT,  
INDIANA COURT OF APPEALS AND INDIANA TAX COURT  
EXIT CONFERENCE

The contents of this report were discussed on September 30, 2003, with Mr. David Schanker, Chief of Staff; and Ms. Colleen McNenny Shere, Acting Clerk of the Indiana Supreme Court, Indiana Court of Appeals and Indiana Tax Court. A copy of this report was forwarded via email to Brian Bishop, Clerk of the Indiana Supreme Court, Indiana Court of Appeals and Indiana Tax Court. The official response to the finding has been made a part of this report and may be found on Pages 6 through 13.



Colleen McNenny Shere  
ACTING CLERK

**CLERK**  
**SUPREME COURT, COURT OF APPEALS, AND TAX COURT**

State House, Rm. 217  
200 West Washington Street  
Indianapolis, IN 46204

TELEPHONE (317) 232-1930  
FAX (317) 232-8365

OFFICIAL RESPONSE TO AUDIT

October 7, 2003

Mr. Charles Johnson III  
State Examiner  
State Board of Accounts  
302 West Washington Street, Rm. E418  
Indianapolis, Indiana 46204-2738

Dear Mr. Johnson:

This letter is the official response of the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court to the State Board of Account's *Audit Results and Comments* as of July 7, 2003.

The Clerk's Office would like to thank Mr. Michael Lynch, State Board of Accounts Field Examiner, for his professionalism in handling this audit. His review has proven helpful in planning for future accounting matters facing the Clerk's Office.

The official response of the Clerk's Office to the *Audit Results and Comments* is as follows:

SDO FUND RECONCILIATIONS

The Clerk's Office maintains an electronic ledger for its SDO fund that reflects all fund expenditures and deposits. In the past, bank statements for the fund have been reviewed to ensure that all transactions are reflected, but no formal reconciliation has been performed. We plan, however, to implement the field examiner's directive that reconciliations be regularly performed.

ACCOUNTING RECORDS

As with the SDO fund, the Clerk's Office maintains an electronic ledger for receipts of the Attorneys' Annual Fees and for the disbursement of funds to the Supreme Court Disciplinary Commission and the CLE Commission. In the past, bank statements for the Annual Fees account have been reviewed to ensure that all transactions are reflected, but no formal



reconciliation has been performed. We plan, however, to implement the field examiner's directive that reconciliations be regularly performed.

#### DEPOSIT OF PUBLIC FUNDS

Pursuant to Rule 23, Section 21 of the Indiana Rules of Admission and Discipline, the Clerk's Office is required to collect the Annual Fees paid by all active and inactive Indiana attorneys. Under Section 21(h), the Clerk must deposit these funds

in a special account to be maintained by the Clerk and designated "Clerk of the Courts--Annual Fees." As collected, the Clerk shall thereafter issue those funds to the Disciplinary Commission, and the Executive Secretary shall cause the same to be deposited into a special account designated "Supreme Court Disciplinary Commission Fund."

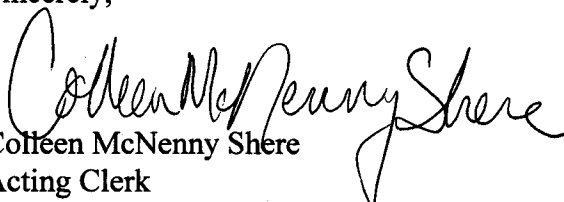
Ind. Admission Rule 23, Sect. 21(h). The Clerk is directed similarly to collect a fee to be paid to the Commission for Continuing Legal Education under Ind. Admission Rule 29, Section 7.

Our procedure for collecting and disbursing funds is consistent with this mandate. The Clerk's Office has maintained an account at Bank One for the purpose of depositing and disbursing the funds generated by the Annual Fees, and the Disciplinary Commission maintains an account at National Bank of Indianapolis for receipt of the funds. To our knowledge, these funds have never been deposited with the Treasurer of State or disbursed from a state account.

In addition, the Indiana Constitution vests the power over admission and discipline of attorneys exclusively with the Supreme Court. Art. 7, Sect. 4. The funds collected by the Clerk's Office for Annual Fees are under the exclusive control of the judicial branch, and, as such, we maintain respectfully that the doctrine of separation of powers permits us to continue to process the Annual Fees without depositing them in a state account.

Thank you for your consideration of this response. Please do not hesitate to contact me or the Chief of Staff, David Schanker, at 233-1976.

Sincerely,

  
Colleen McNenny Shere  
Acting Clerk



Colleen McNenny Shere  
ACTING CLERK

*CLERK*  
*SUPREME COURT, COURT OF APPEALS, AND TAX COURT*

State House, Rm. 217  
200 West Washington Street  
Indianapolis, IN 46204

TELEPHONE (317) 232-1930  
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ADDENDUM TO OFFICIAL RESPONSE TO AUDIT

October 17, 2003

Mr. Charles Johnson III  
State Examiner  
State Board of Accounts  
302 West Washington Street, Rm. E418  
Indianapolis, Indiana 46204-2738

Dear Mr. Johnson:

This letter is an addendum to the official response dated October 7, 2003, of the Clerk of the Indiana Supreme Court, Court of Appeals, and Tax Court to the State Board of Account's *Audit Results and Comments* as of July 7, 2003.

We have done further research into the question of the Clerk's authority to maintain a separate, private account for the deposit of the annual fees collected from all active and inactive Indiana attorneys. On May 25, 1995, the Indiana Supreme Court issued an order in the case styled *In the Matter of the Management of the Indiana Supreme Court Disciplinary Commission and the Continuing Legal Education Fund*, cause number 94S00-9505-MS-599, concerning Indiana Admission and Discipline Rule 23. The Court ordered, *inter alia*, as follows:

1. The Clerk of the Supreme Court shall maintain a suitable account in a financial institution for the exclusive purpose of holding the combined fee payments and any penalties thereon that are made annually by Indiana attorneys pursuant to Admission and Discipline Rule 23, Section 21 and Admission and Discipline Rule 29, Section 7 (hereinafter "the combined account"). The Clerk shall administer this account as follows:
  - a. The Clerk shall maintain the checkbook and account records for the deposit of funds into and the disbursement of funds from the combined account.
  - b. The Clerk shall have signature authority over the combined account.

- c. The Clerk shall maintain all financial records relating to the combined account and shall report on the status of the combined account from time-to-time to the Executive Secretary of the Disciplinary Commission and the Executive Secretary of the Commission for Continuing Legal Education.
- d. The Clerk shall collect attorney annual fee payments and promptly deposit the same into the combined account.
- e. The Clerk shall keep accurate and timely records of the identity of funds in the combined account and shall promptly disburse from the combined account to the Disciplinary Commission and the Commission for Continuing Legal Education all funds to which each agency is entitled.

The procedure of the Clerk's Office for collecting and disbursing funds collected as attorney fees is consistent with this Order.

A copy of the Supreme Court's Order is enclosed.

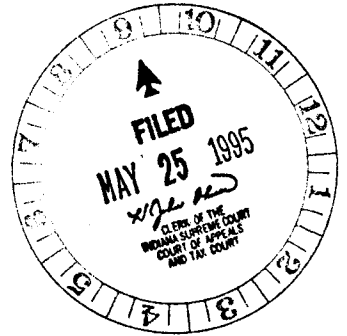
If you have any questions or concerns, please do not hesitate to contact me or the Chief of Staff, David Schanker, at 233-1976.

Sincerely,



Colleen McNenny Shere  
Acting Clerk

IN THE  
SUPREME COURT OF INDIANA



IN THE MATTER OF THE MANAGEMENT OF THE )  
INDIANA SUPREME COURT DISCIPLINARY )  
COMMISSION FUND AND THE CONTINUING )  
LEGAL EDUCATION FUND. )

94500 9505 MS 599

ORDER

Indiana Admission and Discipline Rule 23, Section 21(f) provides that all funds collected by the Clerk of the Supreme Court on behalf of the Indiana Supreme Court Disciplinary Commission shall be maintained by the Clerk in a special account, to be designated the Supreme Court Disciplinary Fund. It further provides that the Clerk shall make disbursements from the Disciplinary Fund upon vouchers approved by the Chief Justice.

Indiana Admission and Discipline Rule 23, Section 7(a) provides that all funds collected by the Clerk of the Supreme Court on behalf of the Indiana Commission for Continuing Legal Education shall be maintained by the Clerk in a special account, to be designated the Continuing Legal Education Fund. It further provides that the Clerk or a specified Deputy Clerk shall have the authority to issue checks for making disbursements from the Continuing Legal Education Fund after approval of payment by the Executive Committee of the Commission for Continuing Legal Education and the Chief Justice or, for amounts of Five Hundred Dollars (\$500.00) or less, the Supreme Court Administrator.

On April 15, 1994, this Court issued an Order in case number 95S00-9404-MS-355, directing that certain of the responsibilities of the Office of the Clerk delineated in Admission and Discipline Rules 23, Section 21(f), and Rule 29, Section 7(a), be exercised by a specified Deputy

Clerk within the Office of the Clerk of the Supreme Court and that other responsibilities for administration of the Disciplinary Commission Fund and the Continuing Legal Education Fund be transferred from the Office of the Clerk to the Disciplinary Commission and the Commission for Continuing Legal Education.

On or shortly after April 15, 1994, the Clerk of the Supreme Court declined to carry out the responsibilities of that office as set out in the order of April 15, 1994 and delivered to the Supreme Court all books and papers related to the Disciplinary Commission Fund and the Continuing Legal Education Fund. Since then, the Disciplinary Commission and the Continuing Legal Education Commission have administered their respective funds and the combined account into which attorney's annual combined fee payments are deposited without the services of the Office of the Clerk of the Supreme Court.

The current and duly elected Clerk of the Indiana Supreme Court, H. John Okeson, has expressed his willingness and desire to resume any and all responsibilities for collection and administration of funds paid for use by the Disciplinary Commission and the Commission for Continuing Legal Education Fund that the Court deems appropriate.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Clerk of the Supreme Court shall maintain a suitable account in a financial institution for the exclusive purpose of holding the combined fee payments and any penalties thereon that are made annually by Indiana attorneys pursuant to Admission and Discipline Rule 23, Section 21 and Admission and Discipline Rule 29, Section 7 (hereinafter "the combined account"). The Clerk shall administer this account as follows:

- a. The Clerk shall maintain the checkbook and account records for the deposit of funds into and the disbursement of funds from the combined account.
  - b. The Clerk shall have signature authority over the combined account .
  - c. The Clerk shall maintain all financial records relating to the combined account and shall report on the status of the combined account from time-to-time to the Executive Secretary of the Disciplinary Commission and the Executive Director of the Commission for Continuing Legal Education.
  - d. The Clerk shall collect attorney annual fee payments and promptly deposit the same into the combined account.
  - e. The Clerk shall keep accurate and timely records of the identity of funds in the combined account and shall promptly disburse from the combined account to the Disciplinary Commission and the Commission for Continuing Legal Education all funds to which each agency is entitled.
2. The Disciplinary Commission Fund shall be administered by the Disciplinary Commission and the Executive Secretary thereof as follows:
- a. All disbursements from the combined account by the Clerk to the Disciplinary Commission Fund and all other funds collected by the Disciplinary Commission shall be promptly deposited into a suitable account or accounts in a financial institution or institutions.
  - b. Disbursements from the Disciplinary Commission Fund shall be made solely upon vouchers signed by the Chief Justice of this Court, unless the Chief Justice shall, by prior order, approve the payment of certain regularly recurring expenses upon the request of the Executive Secretary. All salaries to be paid shall be specifically ordered and approved by the Supreme Court.

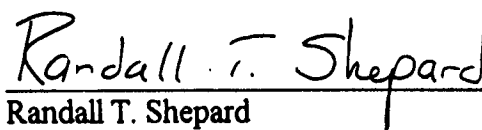
3. The Continuing Legal Education Fund shall be administered by the Commission for Continuing Legal Education and the Executive Director thereof as follows:

a. All disbursements from the combined account by the Clerk to the Continuing Legal Education Fund and all other funds collected by the Commission for Continuing Legal Education shall be promptly deposited into a suitable account or accounts in a financial institution or institutions.

b. Disbursements from the Continuing Legal Education Fund shall first be approved by the Executive Committee and then shall be approved by the Chief Justice if the amount is over five hundred dollars (\$500.00) and by the Supreme Court Administrator if the amount is five hundred dollars (\$500.00) or less. All salaries to be paid shall be specifically ordered and approved by the Supreme Court.

All of which is ordered, this 25<sup>th</sup> day of May, 1995.

All Justices concur.

  
Randall T. Shepard  
Chief Justice of Indiana

Distribution:

Executive Secretary  
Indiana Supreme Court Disciplinary Commission

Executive Director  
Indiana Commission for Continuing Legal Education

H. John Okeson  
Clerk, Indiana Supreme Court